THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0458, In the Matter of Mark V. Coll and Diane T. Coll, the court on June 14, 2005, issued the following order:

The respondent, Diane T. Coll, appeals an order of the Brentwood Family Division granting the motion to modify filed by the petitioner, Mark V. Coll. She contends that the trial court erred in: (1) modifying the parties' permanent stipulation absent a substantial change of circumstances; (2) ruling that the petitioner is no longer obligated to contribute towards private secondary school costs for his son Matthew; and (3) ruling that the petitioner is no longer obligated to pay college expenses for his son Patrick because of the 2004 amendment to RSA 458:17. We affirm in part, vacate in part, and remand.

The parties' June 2003 divorce decree included a permanent stipulation providing in part that they would each pay half of the cost of any child's post-secondary education after the child had exhausted all other means of aid. The stipulation further provided that the parties would each pay half of the cost of Matthew's private high school tuition. Because the petitioner was unemployed at the time, the stipulation provided that he would pay child support of $50.00 per month.

After the petitioner became employed, he filed a motion to modify child support. A hearing was held on May 26, 2004. The trial court ruled, among other things, that the petitioner is no longer obligated to contribute towards the college expenses of his son Patrick, or the private educational costs of his son Matthew. The court increased the petitioner's child support obligation to $258.00 biweekly in accordance with the child support guidelines.

On appeal, we will uphold the trial court's decision unless it is unsupported by the evidence or tainted by an error of law. See In the Matter of Barrett & Coyne, 150 N.H. 520, 523 (2004).

The petitioner's change in income resulting from his becoming employed constituted a substantial change in circumstances, permitting either party to seek an adjustment in child support. See Rattee v. Rattee, 146 N.H. 44, 46 (2001). The trial court found that no special circumstances exist that require Matthew to attend private high school. Because this finding is supported by the evidence, we affirm the trial court's order that the petitioner is no longer obligated to contribute towards the private secondary education costs of his son Matthew. See Barrett & Coyne, 150 N.H. at 524-25.

The trial court's ruling that the petitioner is no longer obligated to contribute towards college expenses appears to be based upon application of RSA 458:17, XI-a (2004), which took effect on February 2, 2004. We recently held that RSA 458:17, XI-a applies prospectively only. In the Matter of Donovan & Donovan, 152 N.H. ___, ___ (decided April 1, 2005). Thus, it did not require the trial court to vacate the provision of the permanent stipulation that required both parties to contribute to the children's post-secondary education. To the extent that the trial court's order was based upon RSA 458:17, XI-a, the trial court erred. Accordingly, we vacate that portion of the trial court's order and remand for such further proceedings, consistent with this order, as the trial court deems necessary.

Affirmed in part; vacated in part; remanded.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

Eileen Fox
Clerk